IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.55534-M of 2006

Date of Decision: December 12, 2006

Raj Kumar

...Petitioner

VERSUS

State of Punjab etc.

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Suram Singh Rana, Advocate,
for the petitioner.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

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Petitioner, who is undergoing life imprisonment for an offence under Section 302 IPC, has filed this petition, seeking direction for initiating/allowing his case for premature release on the ground that his case is fully covered by the instructions issued by the State of Punjab governing the cases of premature release. The petitioner, who was convicted on 6.7.1998 has undergone actual

sentence of 12 years and 1 month and has earned remissions of 10 years and 2 months. It is accordingly brought out that he has undergone 22 years and 3 months of sentence. Referring to the instructions dated 8.7.1991 issued by the Punjab Government, governing consideration of cases of premature release, it is averred that case of premature release of the petitioner was required to be considered on completion of 10 years of actual sentence and 14 years sentence with remissions. The case of premature release of the petitioner, however, has not been initiated on the ground that he has committed two jail offences on 7.3.2002 and 22.7.2002. As per allegation, the petitioner had misbehaved with the Jail Medical Officer and Pharmacist, for which he was punished with warning. It is further alleged that on 22.7.2002 the petitioner was punished with a cut of 15 days earned remission for recovery of material like opium during his personal search and accordingly the case for his premature release is not being initiated.

The learned counsel for the petitioner would contend that warning is not a punishment and for this the petitioner cannot be so severely prejudiced for grant of premature release. Even otherwise, it is submitted that these offences were committed long ago and should not be unduly weighed while considering or initiating the case of premature release of the petitioner.

It is not disputed that the petitioner has undergone more than 12 years of actual sentence and has undergone nearly 22 years of sentence including the remissions that he has earned. Is he to be punished again for committing two minor misconducts while undergoing this prolonged period of imprisonment?. The counsel for

the petitioner has relied on a judgment of this Court in the case of Subhash v. State of Haryana, 1994(3) Recent CR 489 to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (supra) has relied on the case of Lila Singh *v. State of Punjab, 1988(1) RCR 28.* It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, good conduct means that the person has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration of release. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as afore-mentioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure

P-1.

The present petition is accordingly allowed. The respondents are directed to initiate the case of the petitioner for premature release in terms of the instructions, Annexure P-1. The commission of jail offence and the award of punishment on account thereof is required to be ignored while considering the case of the petitioner for premature release.

December 12, 2006 (RANJIT SINGH)
ramesh JUDGE